

STAFF DRAFT – FOR DISCUSSION PURPOSES ONLY – October 27, 2009

**TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES**

IIEC Proposed Changes and Comments

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PART 455

**RENEWABLE PORTFOLIO STANDARD AND CLEAN COAL
STANDARD FOR ALTERNATIVE RETAIL ELECTRIC SUPPLIERS
AND UTILITIES OPERATING OUTSIDE THEIR SERVICE AREAS**

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AUTHORITY: Implementing and authorized by Sections 16-115 and 16-115D of the Public Utilities Act [220 ILCS 5/16-115 and 16-115D].

SOURCE: Adopted at __ Ill. Reg. ____, effective December __, 2009.

SUBPART A: GENERAL PROVISIONS

Section 455.10 Definitions and Incorporations

The following terms as used in this Part shall have the following meanings:

“Act” means the Public Utilities Act [220 ILCS 5].

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“Alternative retail electric supplier” or “ARES” has the same meaning as in Section 16-102 of the Act [220 ILCS 5/16-102].

“Clean coal facility” has the same meaning as in Section 1-10 of the Illinois Power Agency Act [(20 ILCS 3855/1 - 10)].

“Clean coal standard” means the various requirements imposed by Sections 16-115(d)(5) and 16-116(c) of the Act[220 ILCS 5/16-115(d)(5) and 16-116(c)] on ARES and electric utilities serving retail customers outside their service areas to source electricity from clean coal facilities.

“Commission” means the Illinois Commerce Commission.

“Compliance period” or “compliance year” means each 12-month period beginning June 1 and ending May 31, commencing June 1, 2009, and the comparable 12-month period in each succeeding year.

“Electric cooperative” has the same meaning as in Section 3.4 of the Electric Supplier Act [220 ILCS 30/3.4].

“IPA Act” means the Illinois Power Agency Act [20 ILCS 3855].

“M-RETS” means the Midwest Renewable Energy Tracking System.

“Municipal system” means any public utility owned and operated by any political subdivision or municipal corporation of the State of Illinois, or owned by such an entity and operated by any lessee or agent thereof.

“PJM-GATS” means the PJM Environmental Information System Generation Attribute Tracking System

“Renewable energy credit” or “REC” has the same meaning as in Section 1-10 of the IPA Act [(20 ILCS 3855/1 - 10)].

“Renewable energy resources” has the same meaning as in Section 1-10 of the IPA Act [20 ILCS 3855/1 - 10].

“Renewable portfolio standard” or “RPS” means the various requirements imposed by Section 16-115D of the Act [220 ILCS 5/16-115D] on ARES and electric utilities serving retail customers outside their service areas.

“Retail customer” has the same meaning as in Section 16-102 of the Act [220 ILCS 5/16-102].

SUBPART B: RENEWABLE PORTFOLIO STANDARD REQUIREMENTS

Section 455.100 Applicability of Subpart B

This Subpart does not apply to electric cooperatives or municipal systems making an election under Section 17-300 of the Act [220 ILCS 5/17-300] to become an alternative retail electric supplier **or, except as provided in Section 455.150 of this Subpart, to an ARES who is exempt from the requirements of Section 16-115D of the Act [220 ILCS 5/16-115D].**

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Section 455.110 Obligation to Procure Renewable Energy Resources

- a) Each ARES and electric utility serving retail customers outside its service areas shall procure cost-effective renewable energy resources in accordance with the requirements of Section 16-115D of the Act [220 ILCS 5/16-115D].
- b) For ARES, the obligation to procure renewable energy resources is expressed in units of electricity (megawatt-hours) and is measured as a percentage of the actual amount of metered electricity delivered to the ARES' Illinois retail customers during each compliance year, pursuant to contracts executed or extended after March 15, 2009 [220 ILCS 5/16-115D(a)(2) and (6)].
- c) For electric utilities serving retail customers outside their service areas, the obligation to procure renewable energy resources is expressed in units of electricity (megawatt-hours) and is measured as a percentage of the actual amount of metered electricity supplied in the State by the utility outside of its service territory during each compliance year, pursuant to contracts executed or extended after March 15, 2009 [220 ILCS 5/16-115D(a)(2), (a)(6) and (g)].
- d) The minimum quantity of renewable energy resources to be procured for each compliance year shall be calculated based on the annual percentages set forth in Section 1-75(c)(1) of the IPA Act [20 ILCS 3855/1-75(c)(1)].
- e) At least 50% of the obligation to procure renewable energy resources must be satisfied by making alternative compliance payments, and the balance of the obligation to procure renewable energy resources may be satisfied by generating electricity using renewable energy resources, purchasing electricity generated using renewable energy resources, purchasing renewable energy credits from renewable energy resources, or making alternative compliance payments [220 ILCS 5/16-115D(b)(2)].
- f) The Commission shall establish an alternative compliance payment rate for each compliance year for the service territory of each electric utility that is subject to Section 1-75(c) of the IPA Act . The "maximum alternative compliance payment rate" for each compliance year shall be equal to the maximum allowable annual estimated average net increase due to the costs of the utility's purchase of renewable energy resources included in the amounts paid by eligible retail customers in connection with electric service, as described in Section 1-75(c)(2)

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of the Illinois Power Agency Act for the compliance period, as established in the approved procurement plan]. The “actual alternative compliance payment rate” will be equal to the lower of the maximum alternative compliance payment rate or the total amount of dollars the utility actually spent on renewable resources for the compliance period divided by the forecasted load of eligible retail customers, at the customers' meters, as previously established in the Commission-approved procurement plan for that compliance year. (See Section 16-115D(d)(1) of the Act [220 ILCS 5/16-115D(d)(1)].

- g) To the extent to which an ARES or electric utility serving retail customers outside its service areas seeks to meet its obligation to procure renewable energy resources by generating electricity using renewable energy resources, purchasing electricity generated using renewable energy resources, or purchasing renewable energy credits, the Act establishes minimum percentages that must be procured from specific renewable resource types (wind and solar photovoltaic) and specifies the locations where the resources must be located (within Illinois, within states that adjoin Illinois or within portions of the PJM and MISO footprint in the United States) [220 ILCS 5/16-115D(a)(3)]. For purposes of this Subpart, the states that adjoin Illinois are: Wisconsin, Indiana, Iowa, Kentucky, Michigan, and Missouri.

Section 455.120 Annual Report of Compliance with Renewable Energy Portfolio Standard

By September 1, 2010, and by September 1 of each succeeding year, each ARES and electric utility serving retail customers outside its service areas shall file with the Chief Clerk of the Commission, and provide to the Directors of the Energy Division and the Financial Analysis Division of the Commission, or to their successors, a compliance report for the compliance year ending May 31 of that year, showing compliance with the renewable portfolio standard of Section 16-115D of the Act for the applicable compliance period. The report shall be titled “Annual Report of Compliance with Renewable Portfolio Standard.”

- a) At a minimum, the compliance report shall provide, contain or show, for the applicable compliance year, and for each utility service territory within which the ARES serves Illinois retail customers or the electric utility serves retail customers outside its service areas, the following:
 - 1) The total quantity of metered electricity delivered to Illinois retail customers by the ARES or the quantity of metered electricity supplied by an electric utility in Illinois outside the utility's service territory. The report shall show this information, in megawatt-hours, by service territory for each electric utility that is subject to Section 1-75(c) of the IPA Act.
 - 2) The quantity of metered electricity delivered to Illinois retail customers by the ARES, or the quantity of metered electricity supplied by an electric utility in Illinois outside the utility's service territory, pursuant to contracts

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executed or extended after March 15, 2009. The report shall show this information, by utility service territory, in megawatt-hours.

- 3) The quantity of RECs (in megawatt-hours), whether directly purchased or arising from generating electricity or purchasing electricity generated from renewable energy resources, that were retired for purposes of meeting the requirements of the renewable portfolio standard for the compliance period. The report shall also show the quantity and percentage of these RECs that were derived from wind-powered generation resources. For compliance periods starting on and after June 1, 2015, the report shall also show the quantity and percentage of these RECs that were derived from solar photovoltaic resources. All REC quantities reported shall be categorized by regional REC tracking system: PJM-GATS (or its successor) and M-RETS (or its successor).
 - 4) The quantity of RECs (in megawatt-hours) not used to comply with the renewable portfolio standard for the compliance period that are being banked and carried forward, or that were previously banked and were used to comply with the renewable portfolio standard for the compliance period. The documentation and minimum information requirements of subsection (c) of this Section also apply to RECs that are banked or that were previously banked and used to comply with the renewable portfolio standard.
 - 5) The alternative compliance payments that were made for purposes of meeting the requirements of the renewable portfolio standard for the compliance period.
- b) Compliance methods other than alternative compliance payments
- 1) If an ARES or electric utility serving retail customers outside its service areas seeks to comply with the RPS by generating electricity using renewable energy resources, purchasing electricity generated using renewable energy resources, or purchasing renewable energy credits, the only acceptable proof of compliance shall be in the form of verifiable documentation from PJM-GATS (or its successor) or M-RETS (or its successor) of the retirement of renewable energy credits associated with the production of electricity using renewable energy resources identified pursuant to Section 16-115D(a)(4) of the Act.
 - 2) If any of these means of compliance are used by the ARES or electric utility serving retail customers outside its service areas during a compliance period, the annual report shall be accompanied by documentation from PJM-GATS (or its successor) and M-RETS (or its successor) of the RECs that were retired for purposes of meeting the

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requirements of the renewable portfolio standard for the compliance period. At a minimum, the documentation provided shall show

- A) the month and year that the electricity associated with the RECs were generated;
 - B) the retirement status of the RECs;
 - C) the State RPS for which the RECs were retired; and
 - D) whether the renewable resource associated with the RECs were located in Illinois, within states that adjoin Illinois or within portions of the PJM and MISO footprint in the United States.
- c) If metered electricity delivered to Illinois retail customers by an ARES or supplied by an electric utility in Illinois outside the utility's service territory are delivered or supplied during the compliance period pursuant to contracts that were not executed or extended after March 15, 2009, the ARES or utility shall provide a list, by utility service territory, of those Illinois retail customers who received electricity that was not delivered pursuant to contracts executed or extended after March 15, 2009. The list shall include the following information: customer name, and the quantity of electricity (in megawatt-hours) delivered to the customer during the compliance period that was not delivered pursuant to contracts executed or extended after March 15, 2009.

[Note: This requirement is obviated by the proposed Section 451.20(f) of the ARES Rule and Section 455.150, as modified below.]

- j) All reports filed or provided under this Section shall be verified by an executive officer of the filing party having knowledge of the facts before either a notary public or other officer authorized to administer oaths.

Section 455.130 Alternative Compliance Payment Requirements

- a) The ARES' or utility's alternative compliance payments for each service territory shall be equal to the actual alternative compliance payment rate for the compliance period for the service territory multiplied by the actual amount of metered electricity delivered by the ARES or utility, pursuant to contracts executed or extended after March 15, 2009, to retail customers within the service territory during the compliance period, multiplied by the result of one minus the ratio (which cannot exceed ½) of the quantity of renewable energy resources used by the ARES or utility to comply with the requirements of Section 16-115D within the service territory to the product of the percentage of renewable energy resources required for the compliance period under Section 16-115D(a)(3) of the Act and the actual amount of metered electricity delivered by the ARES or utility to retail customers within the service territory during the compliance period [220 ILCS 5/16-115D(b) and (d)(3)].

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d) If the Commission has entered an order pursuant to Section 16-115D(h) of the Act determining that the provisions of Section 16-115D and Section 16-115(d) of the Act relating to procurement of renewable energy resources do not apply to an ARES or electric utility serving retail customers outside its service areas, the ARES or utility shall include in its annual compliance report:

1) The docket number of the Commission proceeding in which a Commission order determined that the provisions of Section 16-115D and Section 16-115(d) of the Act relating to procurement of renewable energy resources do not apply to the ARES or utility;

2) a statement indicating whether the conditions or circumstances giving rise to the Commission's determination continued to apply to the ARES or utility during the compliance year; and

3) the further demonstrations identified in the Commission's order of compliance with the criteria identified in Section 16-115D(h) of the Act.

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- b) The dollar amount of alternative compliance payments shall be calculated using the applicable alternative compliance payment rates approved by the Commission.
- c) Alternative compliance payments shall be made by September 1, 2010 for the compliance period of June 1, 2009 to May 1, 2010, and by September 1 of each succeeding year for each subsequent compliance period.
- d) Alternative compliance payments shall be made by check, payable to “Illinois Commerce Commission,” and shall be delivered to the following address:

Illinois Commerce Commission
Administrative Services Division
Attn: Manager of the Revenues Section
Re: Illinois Power Agency Renewable Energy Resources Fund.
527 East Capitol Avenue
Springfield, IL 62701

Alternative compliance payments shall be deemed made only when actually received at the office of the Commission at the specified address. Payment by a check that does not clear after being deposited by the Commission shall be deemed to not have been made.

- e) Alternative compliance payments shall be accompanied by a letter to the Chief Clerk of the Commission and the Director of the Energy Division or their successors containing the following information:
 - 1) “Re: Illinois Power Agency Renewable Energy Resources Fund”;
 - 2) Name and address of alternative retail electric supplier;
 - 3) The alternative retail electric supplier’s FEIN number;
 - 4) Name and telephone number of person writing the letter;
 - 5) Dollar amount of the check (alternative compliance payment);
 - 6) Check number;
 - 7) Compliance period for which the payment is being made (e.g., June 1, 2009 through May 31, 2010); and
 - 8) An indication whether the payment is intended to satisfy the balance of alternative compliance payment requirements for the compliance period or whether more payments may be forthcoming.

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- f) The Commission shall deposit all amounts received into the Illinois Power Agency Renewable Energy Resources Fund, a special fund in the State treasury administered by the Illinois Power Agency.
- g) The Commission shall carry forward to subsequent compliance periods the dollar amount of any compliance payments recognized by the Commission to be in excess of requirements, unless and to the extent to which the ARES petitions for and is granted permission to apply to the Illinois Power Agency for a refund.

Section 455.140 Record Retention, Additional Documentation, and Confidential Information

- a) In addition to any other requirements of this Part or of any other applicable law, an ARES or electric utility serving retail customers outside its service areas shall maintain original records of all contracts and bills associated with Illinois retail customers who received electricity for at least 36 months beyond the end of the compliance period during which the electricity was delivered. All these records and any other documentation or information regarding the compliance by an ARES or electric utility serving retail customers outside its service areas with the renewable portfolio standard shall be made available to the Commission or its Staff upon written request.
- b) Additional information provided to the Commission or its Staff upon written request may be designated as confidential if accompanied by the affidavit and information set forth in Section 16-115D(e) of the Act. Commission Staff is authorized to publicly disclose this documentation and information provided without a confidential designation pursuant to Section 5-108 of the Act [220 ILCS 5/5-108].

Section 455.150 Procedures for Section 16-115D(h) Determination based on the Operation of Combined Heat and Power Systems

- a) Any ARES claiming that Section 16-115D and Section 16-115(d) of the Act do not apply to it pursuant to Section 16-115D(h) of the Act must **certify that it is exempt under Section 16-115D(h) of the Act**. The ARES shall certify **annually** the conditions giving rise to the **exemption** from application of the provisions of Section 16-115D and Section 16-115(d) of the Act relating to procurement of renewable energy resources continue to apply or exist in each compliance year.
- b) **The certification of the ARES shall contain** the following:
 - 1) that it operates a combined heat and power system in Illinois or that it has a corporate affiliate that operates a combined heat and power system in this State; and

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- 2) that this combined heat and power system supplies electricity primarily to or for the benefit of:
- A) facilities owned by the ARES, its subsidiary, or other corporate affiliate;
 - B) facilities electrically integrated with the electrical system of facilities owned by the ARES, its subsidiary, or other corporate affiliate; or
 - C) facilities that are adjacent to the site on which the combined heat and power system is located.
- c) For purposes of this Part, a combined heat and power system means a cogeneration facility, as defined in 18 CFR 292.202, **[Note: No requirement in law that CHP be a QF.]**
- d) A Section 16-115D(h) Petition shall include, at a minimum, the following:
- 1) A description of the combined heat and power system or systems in Illinois relied upon pursuant to Section 16-115D(h) for the exception from application of the provisions of Section 16-115D and Section 16-115(d) of the Act;
 - 2) For each system identified in subsection (d)(1), **that is a qualifying cogeneration facility under 18 CFR 292.205**, documentation of compliance with the information collection requirements established by the Federal Energy Regulatory Commission (“FERC”) in FERC Form No. 556, or any successor information collection requirements established by FERC, to obtain and maintain status as a qualifying facility (See 18 C.F.R. 131.80). This documentation shall include a copy of all applications for self-certification, self-recertification, certification, and recertification, and their associated FERC docket numbers. In the alternative, a petitioner may provide this documentation with **an affidavit** submitted with its petition, but shall indicate in the petition that the documentation is attached to its **affidavit**.
 - 3) For each combined heat and power system identified in subsection (d)(1), , a proposed method to demonstrate that, for the initial and each subsequent compliance period, the petitioner or its corporate affiliate operated the system and that the system supplied electricity primarily to or for the benefit of:
 - A) facilities owned by the petitioner, its subsidiary, or other corporate affiliate;

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- B) facilities electrically integrated with the electrical system of facilities owned by the petitioner, its subsidiary, or other corporate affiliate; or
- C) facilities that are adjacent to the site on which the combined heat and power system is located.
- e) The supporting affidavit shall be submitted at the time the petition is filed. At a minimum, this affidavit shall demonstrate that, for the initial compliance period over which the exemption is sought, using, to the extent practicable, the methods provided in subsection (d)(3), the petitioner or its corporate affiliate operated (or will operate) the system and that the system supplied (or will supply) electricity primarily to or for the benefit of:
- 1) facilities owned by the petitioner, its subsidiary, or other corporate affiliate;
 - 2) facilities electrically integrated with the electrical system of facilities owned by the petitioner, its subsidiary, or other corporate affiliate; or
 - 3) facilities that are adjacent to the site on which the combined heat and power system is located.
- f) The Commission shall enter an order no more than 45 days after the petition is filed, accepting the certification of the petitioner that Sections 16-115D and Section 16-115(d) of the Act are not applicable to the Petitioner. The Commission shall also specify the method or methods it adopted for making the demonstrations described in subsection (d)(3), and annual reports shall utilize the same method or methods to make these demonstrations for future compliance periods.
- g) The ARES shall certify annually its continued compliance with the conditions and circumstances described in its petition. This certification shall be submitted concurrently with, and to the same recipients as, the information required under Section 451.710(b) of the Commission's rules.
- h) [Note: The law does not require a determination that sections 16-115D and 16-115(d) do not apply. The legislature has made that determination. ICC does not determine that Act does not apply to Co. Law applies to ARES, not generated electricity, and is not limited to the output of CHP. See 15-115D (h) below:
- “(h) The provisions of this Section and the provisions of subsection (d) of Section 16-115 of this Act [220 ILCS 5/16-115] relating to procurement of renewable energy resources shall not apply to an alternative retail electric supplier that operates a combined heat and power system in this State or that has a corporate

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affiliate that operates such a combined heat and power system in this State that supplies electricity primarily to or for the benefit of: (i) facilities owned by the supplier, its subsidiary, or other corporate affiliate; (ii) facilities electrically integrated with the electrical system of facilities owned by the supplier, its subsidiary, or other corporate affiliate; or (iii) facilities that are adjacent to the site on which the combined heat and power system is located.”]

Section 455.160 Other Commission Proceedings

- a) After receipt of an annual report required by Section 455.120 or the due date for these reports, whichever occurs first, the Commission may initiate, on its own motion or upon the petition of an interested party, and for each certified ARES of record and each electric utility serving retail customers outside its service areas, a docketed proceeding to investigate whether the ARES or utility has complied with the requirements of Section 16-115D of the Act and this Subpart, to determine the amount by which alternative compliance payments have been insufficient or in excess of requirements, and, if applicable, to determine if the demonstrations described in Section 455.150(d)(3) have been made. Pursuant to Section 16-115D(f) of the Act [220 ILCS 5/16-115D(f)], the ARES or electric utility serving retail customers outside its service areas shall have the burden of proof in this proceeding.
- b) An ARES or electric utility serving retail customers outside its service areas may petition the Commission for permission to apply to the Illinois Power Agency for a refund of compliance payments recognized by the Commission to be in excess of requirements.

SUBPART C: COMPLIANCE WITH CLEAN COAL STANDARD REQUIREMENTS

Section 455.200 Applicability of Subpart C

This Subpart does not apply to electric cooperatives or municipal systems making an election under Section 17-300 of the Act to become an alternative retail electric supplier.

Section 455.210 Reporting of Compliance with Clean Coal Standard

- a) Within 90 days after approval by the Illinois General Assembly of the initial clean coal facility, each ARES and electric utility serving retail customers outside its service areas shall enter into a sourcing agreement with the initial clean coal facility consistent with the provisions of Section 16-115(d)(5) of the Act. Within 30 days after entering into this sourcing agreement, each ARES and electric utility serving retail customers outside its service areas shall file with the Chief Clerk of the Commission, and provide to the Directors of the Energy Division and the Financial Analysis Division, or their successors, a report confirming that it has

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entered into the sourcing agreement and attaching a signed copy of the sourcing agreement.

- b) By the earliest September 1 following execution of a sourcing agreement with the initial clean coal facility and by September 1 of each succeeding year, each ARES and electric utility serving retail customers outside its service areas shall file with the Chief Clerk of the Commission, and provide to the Directors of the Energy Division and the Financial Analysis Division, or their successors, a report showing the amount of energy purchased (or financially settled, if the sourcing agreement is executed as a contract for differences) from the initial clean coal facility by the ARES or utility, by month, during the most recent compliance year. The report shall also show how these amounts were consistent with the requirements of Section 16-115(d)(5) of the Act. Each report shall be accompanied by documentation from the initial clean coal facility verifying the amount of energy purchased.
- c) Beginning no later than September 1, 2010, and by September 1 of each subsequent year, each ARES and electric utility serving retail customers outside its service areas shall file with the Chief Clerk of the Commission, and provide to the Directors of the Energy Division and the Financial Analysis Division, or their successors, a report showing the amount of energy purchased by the ARES or utility from clean coal facilities other than the initial clean coal facility, by month, during the most recent compliance year. The report shall also show how these amounts were consistent with the requirements of Section 16-115(d) of the Act. Each report shall be accompanied by documentation from the clean coal facility verifying the amount of energy purchased.
- d) All reports filed or provided under this Section shall be verified by an executive officer of the filing party having knowledge of the facts before either a notary public or other officer authorized to administer oaths.